

## REMARKS

Claims 1 and 3-22 have been rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Moreno et al. (US 5,324,708) in view of Wikeley (US 6,107,249) and Nielsen et al. (US 5,078,782) and with respect to claim 21 (Nielsen et al. (US 5,795,847)). Applicants respectfully traverse.

The claims of the instant application are directed to low-foaming, aqueous glyphosate concentrates comprising glyphosate in a concentration of from 240 to 550 g/l based on glyphosate acid. The examiner states "Moreno et al. clearly disclose a composition comprising glyphosate isopropylammonium salt and isotridecyl alcoholpolyglycol ether which would be a low foaming herbicidal composition" (*citing* Example II.37). The formulation of Example II.37 is a solid concentrate of glyphosate and clearly foaming is not an issue for the solid formulation. To modify the Moreno reference in an attempt to render the current claims obvious would completely destroy the teachings and intent of Moreno.

The Examiner sites Table IV to allegedly support that Moreno et al. teach making concentrated aqueous solutions. This is an incorrect interpretation of the reference. Moreno is concerned with a process for making crystalline, non-hygroscopic monoammonium salts of compounds of Formula I (Col. 4, line 58 – Col. 7, line 10). Moreno teaches that to obtain the monoammonium salts of compounds of Formula I, the diammonium salts must be separated out and that this can be done with solvents or solvent mixtures which show a reasonable solubility difference between the salts. (see, for example, col. 3, lines 28-32; col. 5, lines 57-65 and col. 23, lines 55-62). Table IV does not teach an aqueous concentrate of glyphosate and a poly(alkylene oxide) alkanol as required by the present claims. Rather, Table IV teaches solvents, including water, suitable for separating mono-ammonium salts from di-ammonium salts in order to obtain compositions substantially free of di-ammonium salts of Formula V and allow one to form crystalline, non-hygroscopic monoammonium salts of compounds of Formula I, i.e. solid formulations of the monoammonium salt of glyphosate.

The Examiner relies on Wikely, Nielsen '847 and Nielsen '782 to modify the teachings and address the deficiencies of Moreno. Specifically, Wikely and Nielsen '782 are relied on to provide "basic guidelines on the amount of glyphosate, the amount of surfactant and the amount of alkylglycoside", while Nielsen '847 is relied upon to teach the amounts of ammonium sulfate and non-ionic surfactants.

It is improper to combine references where the references teach away from their combination. *In re Grasselli*, 713 F.2d 731, 743, 218 USPQ 769, 779 (Fed. Cir. 1983) (MPEP 2145 X.D.2.). Further, if the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984) (MPEP 2143.01 V).

In the present case, the Examiner's suggestion of modifying Moreno to make an aqueous concentrate clearly renders Moreno unsatisfactory for its intended purpose (i.e. a non-hygroscopic salt). Specifically, Moreno clearly teaches away from the aqueous concentrates of Wikeley and Nielsen '847 in that Moreno clearly is directed to addressing perceived problems associated with aqueous concentrates by developing a non-hygroscopic solid form of glyphosate (col. 1, lines 52-67). Nielsen '782 is not directed to an aqueous concentrate. To the contrary, Nielsen '782 is directed to a pesticidal concentrate in which the pesticide is dispersed in an oily component and the presence of water is optional (see col. 1, lines 8-13), thus teaching away from Moreno and well as the Wikeley and Nielsen '847 references.

**Claims 1 and 3-22 have been rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Nielsen et al. (US 5,078,782) in view of Moreno et al. (US 5,324,708) and Wikeley (US 6,107,249) and with respect to claim 21 (Nielsen et al. (US 5,795,847)).** Applicants respectfully traverse.

The Examiner states that Nielsen '782 "intrinsically reads on a method of reducing the foaming of a glyphosate concentration composition". The Examiner has provided no evidence showing that the non-ionic surfactants taught in Nielsen '782 reduce foaming. Further, the Examiner has provided no support that Nielsen '782 would read on an aqueous glyphosate concentrate. To the contrary, as discussed above, Nielsen '782 is directed to a pesticidal concentrate in which the pesticide is dispersed in an oily component and the presence of water is optional (see col. 1, lines 8-13). The non-ionic surfactants of Nielsen '782 are used in combination with amino-group containing surfactants to allegedly produce storage-stable suspensions of the dispersed pesticides in the oily phase (col. 5, lines 22-25).

Moreno has been discussed above. While the compositions of Moreno could be considered 'no foaming' herbicidal compositions because they are solids, they are not aqueous concentrates. Wikeley and Nielsen '847 have been discussed above.

There is no motivation to combine the teachings of the oil-dispersions of Nielsen '782 with the solid glyphosate formulations of Moreno. The teachings of Wikeley and Nielsen '847 fail to remedy these deficiencies.

Based upon the foregoing then, Applicants submit that the pending claims are in condition for allowance and the Examiner is courteously solicited to pass this application on to allowance.

As this response is submitted within 6 months from the mailing date of the Office Action, a 3-month extension of time is included herewith.

However, in the event the undersigned is mistaken in his calculations, an appropriate extension of time to respond is respectfully requested, and the Commissioner is authorised to debit the appropriate fee for that extension, or any other fee, from the deposit account of the undersigned, no 50-1676 in the name of Syngenta Crop Protection, Inc.

Respectfully submitted,

USPTO Customer No. 26748  
Syngenta Crop Protection, Inc.  
Patent and Trademark Dept.  
410 Swing Road  
Greensboro, NC 27409  
(336) 632-7586  
(336) 632-2012

/THOMAS HAMILTON/  
Thomas Hamilton  
Attorney for Applicant  
Reg. No. 40,464

**Date: September 3, 2009**